
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair
2015 - 2016 Regular

Bill No: AB 1358
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Urgency: No
Consultant: Kathleen Chavira

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Fiscal: Yes

Subject: School facilities: design-build contracts

SUMMARY

This bill repeals the existing design-build authority for school districts and re-establishes the authority to generally align with that which exists for other state and local agencies, establish extensive new skilled workforce requirements, reduce the threshold for its use from \$2.5 million to \$1 million, and to sunset this authority on January 1, 2025.

BACKGROUND

Existing law authorizes a school district governing board to enter into a design-build contract for the design and construction of a school facility for projects in excess of two million five hundred thousand dollars (\$2,500,000) if, after evaluating traditional design-bid-build and design-build processes in a public meeting, the governing board makes written findings that use of the design-build process on a specific project will either:

- 1) Reduce comparable project costs.
- 2) Expedite the project's completion.
- 3) Provide features not achievable through the traditional design-bid-build method.

Existing law establishes specific procedures for the progression of a K-12 school facility design-build project, outlines the specific elements to be included in a request for proposal (including significant factors, subfactors, methodology, rating and weighting schemes for evaluating proposals), and establishes, among other things, pre-qualification, bonding, and labor compliance program requirements.
(Education Code § 17250.10 - § 17250.50)

Existing law also provides parallel authority, procedures and requirements for community college district governing boards to conduct design-build projects.
(EC § 81700 - § 81708)

Existing law sunsets the authority of K-12 and community college districts to use design-bid procurement on January 1, 2020.

ANALYSIS

This bill:

- 1) Deletes and revises the existing authority of a school district to use a design-build procurement process for public works projects.
- 2) Reduces the threshold for entering into a design-build contract for K-12 school facility projects from \$2.5 million to \$1 million.
- 3) Establishes the authority, procedures, bond and subcontractor requirements, performance criteria and design standards, to enter into design-build contracts consistent with prior statute except for the following changes:
 - a) Adds new definitions for “design-build team,” “Construction subcontract,” and “project.”
 - b) Eliminates the requirement that a school district governing board make specified written findings prior to using the authority.
 - c) Requires adoption of a conflict-of-interest policy by the school district.
 - d) Implements a less prescriptive process for issuing a request for proposal and grants districts greater discretion to determine and assign weight to factors for best value selection.
 - e) Eliminates the requirements for a project inspector.
- 4) Requires that a design-build entity must meet specified skilled and trained workforce requirements to be prequalified or shortlisted for design-build contracts and establishes the following skilled workforce requirements and related definitions:
 - a) “Skilled journeyman” as a worker who either graduated from an applicable apprenticeship program which met specified state or federal approval requirements, or had at least as many hours of on-the-job experience in an applicable occupation as would be required for graduation from a state-approved apprenticeship program.
 - b) “Apprenticeable occupation” as an occupation for which the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations had approved an apprenticeship program before January 1, 2014.
 - c) “Skilled and trained workforce” as a workforce in which all the workers are skilled journeymen or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations and establishes the following phased-in implementation of the proportion of skilled journeymen and subcontractors, employed at every tier, that must be approved apprenticeship program graduates to meet the condition of having a “skilled and trained workforce”:

- i) At least 20% by January 1, 2016.
 - ii) At least 30% by January 1, 2017.
 - iii) At least 40% by January 1, 2018.
 - iv) At least 50% by January 1, 2019.
 - v) At least 60% by January 1, 2020.
- d) Provides that, for an apprenticeable occupation with no approved program prior to January 1, 1995, up to one-half of the apprenticeship program graduate percentage requirements may be met by skilled journeypersons who commenced work in the occupation prior to the approval of an applicable apprentice program in the county of the project's location.
- e) Prohibits the prequalification or shortlisting of a best value entity absent an enforceable commitment to use a skilled and trained workforce for all work on the project/contract as applicable and provides that this commitment may be established by:
- i) An agreement between the entity and the school district governing board to comply with these requirements and the provision of monthly evidence demonstrating such compliance during the performance of the project/contract.
 - ii) A project labor agreement (PLA), entered into by the school district governing board, that includes these requirements and that binds all contractors/subcontractors working on the project/contract and agreement by the entity to become a party to the PLA.
 - iii) Evidence that the entity has entered into a PLA that includes these requirements and that binds the entity and all its subcontractors at every tier performing the project/contract.
- 5) Extends the sunset on the authority to use design-bid from January 1, 2020 to January 1, 2025.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author this bill aligns the statutes authorizing school districts to use design-build with those recently adopted as applicable to the use of design-build by cities, counties, transit and special districts. According to the sponsor, requiring the use of a skilled workforce ensures on-time project delivery, on or under budget, and incentivizes the use of local workers who are graduates of apprenticeship programs.
- 2) ***What is design-build?*** There are two primary construction delivery systems used in the public and private sectors, "design-bid-build" and "design-build."

Current law requires that school districts award construction contracts over \$15,000 to the lowest responsible bidder. Current law also allows contracts for architectural

services to be awarded on the basis of demonstrated competence and professional qualifications to be performed at a fair and reasonable price (not necessarily lowest bidder). These laws have meant that schools (and most public construction work) have been built using a “design-bid-build” methodology wherein a separate contract is awarded for the design work by an architect and another contract is awarded to the lowest responsible bidder for the construction.

In the 1990’s, the state began the enactment of various legislation authorizing state and local entities to use a “design-build” system under specified circumstances. Under this approach a single contract is awarded to a professional team, a “design-build” entity, to conduct both types of work. Rather than awarding such a contract to the lowest responsible bidder, it may be awarded on the basis of the experience and qualifications of the competitors, or on a determination that a particular competitor provides the best value to the project.

The authority for design-bid was first implemented for school districts by AB 1402 (Simitian, Chapter 421, Statutes of 2001), and though originally set to sunset in 2007, was extended to 2010 by AB 127 (Nunez, Chapter 35, Statutes of 2006), this authority is currently extended until 2020 as the result of the enactment of SB 1509 (Simitian, Chapter 736, Statutes of 2012).

- 3) **Related Legislative Analyst’s Office (LAO) reports.** In February 2005, the LAO issued a report on *Design-Build: An Alternative Construction System* in which it reported its consolidated findings on design-build across several public works sectors. Among other things, the LAO recommended that the state adopt a single statute applying to all public entities, design-build be available as an option and not a replacement for “design-bid-build” and that no cost threshold be imposed on the authority to use design-build. The LAO also noted that disadvantages of design-bid included a limited assurance of quality control since the building is not typically defined in detail at the time of entering into the contract, and a more subjective process for awarding contracts and evaluating qualifications and experience, as well as limited access for small contractors without the range of experience of larger, long-established firms.

In January 2010, the LAO presented a summary of reports received from California counties that had completed construction projects using the design-build delivery method, as required under the legislation extending design-build authority to county governments (Public Contract Code Section 20133). The LAO noted that although difficult to draw conclusions from the reports received about the effectiveness of design-build compared to other project delivery methods, there was no evidence to discourage the Legislature from granting design-build authority to local agencies on an ongoing basis. The LAO also recommended that the Legislature consider, among other things, creating a uniform design-build statute.

- 4) **Uniform provisions for design-build authority.** SB 785 (Wolk, Chapter 931, Statutes of 2014) repealed existing law authorizing the Department of General Services, the Department of Corrections and Rehabilitation, and specified local agencies to use the design-build procurement process and enacted more uniform provisions authorizing these entities to utilize this procurement process for public works projects. SB 785 also added a sunset date of January 1, 2025, on these

design-bid authorizations. This bill generally establishes these same provisions as applicable to school districts.

- 5) ***How is the new authority different?*** Generally, the basic structure of the statute remains very similar as regards most definitions, procedures, and bond and subcontractor requirements. Consistent with the provisions of SB 785 (Wolk, 2014), the threshold for entering into a design-build contract for K-12 school facility projects is reduced to \$1 million and design-bid authority sunsets in 2025. Additionally, a school district no longer has to make written findings of the benefits of design-bid prior to its use, the process for issuing a request for proposals is less prescriptive, no project inspector is required, and the requirements for use of a skilled workforce are more extensive.
- 6) ***Apprenticeship programs.*** According to the Department of Industrial Relations (DIR), apprenticeship programs combine training on the job with related and supplemental instruction at school. Each program operates under apprenticeship training standards agreed to by labor and/or management in accordance with State and Federal laws. The period of training is from 1 to 6 years, depending upon the trade with most programs being about 4 years. Apprentices attend classes of related technical instruction, giving apprentices a comprehensive understanding of the theoretical aspects of their work. In most cases this means attending classes at night 4 hours each week, for at least 108 hours a year. Instruction includes such subjects as safety laws and regulations, mathematics, drafting, blueprint reading and other sciences connected with the trade.

In March 2015, the Legislative Analyst's Office reported that there are more than 50,000 apprentices registered in 47 trades, with the vast majority in the construction trades and public safety. The recently adopted 2015-16 State Budget increased funding for Apprenticeship Programs by \$29 million.

Notwithstanding this infusion of funds to support and expand apprenticeship education programs, concerns have been raised about the ability of school districts to meet the annual targets within the timelines established. In response, the author has proposed an amendment to delay implementation of the bill's provisions to apply to bid requests issued on or after July 1, 2016. **Staff recommends** the bill be so amended.

- 7) ***Similar legislation.*** The provisions of this bill relative to a skilled workforce are very similar to recently adopted provisions regarding the use of a design-build method for awarding public works contracts by state and local agencies (SB 785, Chapter 931, Statutes of 2014), as well as contracts for the construction, alteration, demolition, installation, repair, or maintenance work at petroleum refineries (SB 54, Chapter 795, Statutes of 2013). In addition, this Committee has heard other bills this session which implement similar skilled workforce requirements as elements of the authority to use procurement methods other than design-bid-build. These include:
 - a) AB 566 (O'Donnell) which, among other things, establishes similar skilled workforce requirements for lease/leaseback and lease to own procurement contracts. AB 566 was heard and passed by this Committee on June 10, 2015,

by a vote of 6-2 and is currently awaiting action in the Senate Appropriations Committee.

- b) AB 1185 (Ridley-Thomas) establishes similar skilled workforce requirements as a component of a pilot program to authorize the Los Angeles Unified School District (LAUSD) to use a best value procurement method, before December 31, 2020, for public projects that exceed \$1 million. AB 1185 was heard and passed by this Committee on June 17, 2015, by a vote of 6-2 and is currently awaiting action in the Senate Appropriations Committee.

SUPPORT

Air Conditioning Sheet Metal Association
Air-conditioning & Refrigeration Contractors Association
California Labor Federation
California Legislative Conference of the Plumbing, Heating and Piping Industry
California State Association of Electrical Workers
California State Pipe Trades Council
Finishing Contractors Association of Southern California
National Electrical Contractors Association – California Chapters
State Building and Construction Trades Council
United Contractors
Wall and Ceiling Alliance
Western States Council of Sheet Metal Workers

OPPOSITION

Air Conditioning Trade Association
Airtight Heating and Sheet Metal
Associated Builders and Contractors – San Diego Chapter
Associated Builders and Contractors of California
California School Boards Association
Forcum/Mackey Construction Inc.
Fortuna Iron
National Right to Work Committee
O&M Industries
Plumbing-Hearing-Cooling Contractors Association of California
Western Electrical Contractors Association

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